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July 2, 1997

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, DC 20554

Re: WT Docket No. 97-112  
CC Docket No. 90-6

Dear Mr. Caton:

Transmitted herewith on behalf of Aerial Communications, Inc. and Western PCS BTA I Corporation, by its attorneys, are an original and nine copies of their comments in the above-captioned proceeding.

In the event there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

  
George Y. Wheeler

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ORIGINAL

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Cellular Service and Other Commercial	)	WT Docket No. 97-112
Mobile Radio Services in the Gulf of	)	
Mexico	)	
	)	
Amendment of Part 22 of the Commission's	)	CC Docket No. 90-6
Rules to Provide for Filing and Processing	)	
of Applications for Unserved Areas in the	)	
Cellular Service and to Modify Other	)	
Cellular Rules	)	

To: The Commission

COMMENTS OF  
AERIAL COMMUNICATIONS, INC. AND  
WESTERN PCS BTA I CORPORATION

Aerial Communications, Inc.,<sup>1</sup> and Western PCS BTA I Corporation ("Western PCS"),<sup>2</sup> by its attorneys, responds to the Commission's Second Further Notice of Proposed Rulemaking (FCC 97-110) released April 16, 1997 in the above-captioned proceeding.

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<sup>1</sup> Aerial Communications, Inc. ("Aerial Communications"), a majority-owned subsidiary of Telephone and Data Systems, Inc., holds licenses through its wholly-owned subsidiaries for six broadband Personal Communications Services MTA markets including Minneapolis-St. Paul, Tampa-St. Petersburg-Orlando, Houston, Pittsburgh, Kansas City and Columbus and is in the process of implementing competitive wireless services in these markets.

<sup>2</sup> Western PCS BTA I Corporation is a wholly-owned subsidiary of Western PCS BTA Corporation, which in turn is a wholly-owned subsidiary of Western Wireless Corporation ("Western Wireless"). Western Wireless, together with its subsidiaries, holds seven MTA licenses, one hundred BTA licenses, and an interest in a C and F Block licensee.

## INTRODUCTION

Aerial Communications has recently launched its broadband PCS systems serving the Houston and Tampa MTAs. Both of these MTAs have extensive maritime border areas comprising portions of the Gulf of Mexico adjacent to Florida, Louisiana and Texas. Western PCS holds the D/E PCS licenses to serve the Corpus Christi and Brownsville-Harlin BTAs. Western PCS plans to commence service in the near future in these BTAs, which also have extensive maritime borders on the Gulf of Mexico.

The Commission should recognize in these proceedings that Aerial Communications and Western PCS as well as numerous other licensees are in the crucial initial stages of launching new competitive services. They have made extensive commitments of financial and other resources based on the existing licensing structure for PCS services in the Gulf of Mexico.<sup>3</sup> It is essential that the Commission take no action to undercut the opportunities of these incumbent licensees to meet the public demand for such services in the Gulf as their networks mature.

Aerial Communications and Western PCS strongly object to the creation of any MTA, BTA or "two-zone" service area definition for PCS services in the Gulf of Mexico. The Commission should retain its established rules and policies which already provide for the nationwide deployment of PCS services. If despite our threshold objections to these proceedings the Commission still intends to revisit previously settled PCS licensing issues in these proceedings, it should do so giving

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<sup>3</sup> Aerial Communications (formerly American Portable Telecommunications, Inc.) paid more than \$170,000,000 to the U.S. Treasury as the winning bid amounts for these licenses. Significant additional amounts have been spent for microwave relocation, capital equipment, and other costs of launching competitive service. Similarly, Western PCS has expended significant financial resources in anticipation of fully serving the Gulf Coast communities in its service area.

explicit recognition to the established rights of incumbent PCS licensees to serve the Gulf of Mexico.

### DISCUSSION

1. The Commission Should Not Modify or Redefine The Existing MTA and BTA Service Area for the Gulf of Mexico Region.

The Commission's Second FNPRM discusses MTA, BTA and "two-zone" approaches to a possible redefinition of PCS service areas in the Gulf of Mexico.<sup>4</sup> Adoption of any of these approaches potentially has adverse consequences for incumbent PCS licensees like Aerial Communications and Western PCS because creation of new or modified service areas will diminish the scope of their existing license rights. Aerial Communications and Western PCS strongly objects to adoption of such new or revised PCS service area designations for the Gulf.

The rights of PCS incumbents arise under the unique licensing structure adopted by the Commission for the broadband PCS service. Broadband PCS licenses granted for MTA and BTA service areas comprising the Gulf coast specifically permit the provision of PCS services to subscribers in the Gulf of Mexico. The Commission confirmed this unique structure of broadband PCS licensing in Mobile Oil Telecom, Ltd. (DA 96-504) released April 10, 1996 where it stated:

"Entities eligible to serve the Gulf of Mexico are the licensees of BTAs bordering the Gulf."<sup>5</sup>

While this decision mentions BTA service areas in the Gulf, it is self-evident that MTA licensees have similar eligibility.

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<sup>4</sup> Second FNPRM, para. 60

<sup>5</sup> 11 FCC Rcd. 4115, 4116, fn. 10.

The foregoing statement of Commission policy is also confirmed in the Commission's licensing rules and policies. All PCS licenses specify service area boundaries defined in the Rand McNally Commercial Atlas and Marketing Guide, 123rd Edition<sup>6</sup> and are true geographic licenses based upon composites of the county area boundaries for each MTA and BTA involved.<sup>7</sup> In the case of Florida, Louisiana and Texas, these county (or parish) areas have maritime boundaries which extend three "leagues" or more into the Gulf of Mexico.<sup>8</sup> This is approximately nine nautical miles at a minimum.<sup>9</sup>

Under the Commission's power and antenna height limits for broadband PCS,<sup>10</sup> incumbent licensees have ample technical capacity to render reliable PCS services throughout the maritime zones of their service areas. They are permitted to utilize up to 1640 watts peak EIRP with an antenna height up to 300 meters HAAT. Based on engineering estimates obtained by Aerial Communications, land-based transmitters will provide reliable PCS coverage within the maritime boundaries of Florida, Louisiana and Texas with power levels and antenna heights well below these

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<sup>6</sup> See Section 24.202 of the Commission's Rules.

<sup>7</sup> See the Commission's Public Notice CW-94-02 dated September 22, 1994.

<sup>8</sup> See U.S. v. Louisiana, 80 S. Ct. 961, 997 and 1030 (1960). See generally Florida Statutes Annotated, Title 2, Chapter 7, and Texas Natural Resources Code, Title 2, Chapter 11, and Louisiana Revised Statutes, Title 49, Chapter 1., Part I.

<sup>9</sup> For the convenience of the Commission, we attach copies of maps depicting the state maritime boundaries of Florida and Louisiana. The Florida map was prepared by the Florida Department of Environmental Protection. The maritime boundaries of the State of Louisiana are shown on a chart which was copied from Louisiana Revised Statutes, Title 49, Chapter 1., Part I, Section 1, "Gulfward boundary." Comparable maps for the State of Texas were unavailable in a form suitable for filing as an attachment here.

<sup>10</sup> See Section 24.232 of the Commission's Rules.

maximum levels.

Because of the unique propagation characteristics of broadband PCS spectrum over salt water, reliable PCS service can also be provided from land-based locations over path lengths substantially exceeding twenty-five miles making possible rendition of services to PCS subscribers beyond the service area boundaries of incumbent licensees in the portions of the Gulf not encompassed by any licensed service area. The fact that the Commission did not set aside service area boundaries and did not adopt other restrictions to preserve options for co-channel licensing in the areas of the Gulf outside MTA and BTA service area boundaries is significant in this regard. The Commission specifically authorized the use of high gain directional antennas as discussed above in the expectation that such technologies would enhance services to remote or less populated areas to meet public safety as well as a broad range of other telecommunications needs.<sup>11</sup> This means that incumbent licensees have both the licensing rights and the technical capacity to provide continuity of reliable service coverage to subscribers even if they should need service in portions of the Gulf beyond the maritime boundaries of existing MTA and BTA service areas.

Aerial Communications and Western PCS strongly object to adoption of any new or modified PCS licensing policies which would diminish their ability to serve subscribers under their existing licenses as permitted under the Commission's established rules and policies.

2. Incumbent PCS Licensees Should be Given a Fair Opportunity to  
Meet The Demand for Broadband PCS Services in the Gulf of Mexico.

The Commission has every reason to support the diligent efforts of all incumbent PCS

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<sup>11</sup> See Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Memorandum Opinion & Order (FCC 94-144), 9 FCC Rcd. 4957, 5025 (1994).

licensees to launch competitive wireless services for the Gulf of Mexico. The Commission's licensing structure provides ample opportunities for broadband PCS technologies to provide coverage in substantial areas of the Gulf so that PCS soon will become a realistic competitive alternative to cellular service in the region. PCS service area boundaries are already defined so that many of the contentious Gulf service issues which have plagued cellular licensees are avoided. Numerous PCS licensees have made substantial financial commitments to acquire licenses for areas in the Gulf of Mexico and are deploying PCS networks in reliance on the service area rights conferred under the Commission's current rules. Early indications are that these licensees are already making great strides to achieve the rapid deployment of new competitive services in the service areas involved here. The anticipated public benefits from such competition are significant. Healthy competition among incumbent licensees is clearly the best method of assuring that demands for service in the Gulf are promptly met.

### CONCLUSION

Aerial Communications and Western PCS believe that the proposed reexamination of PCS licensing in the Gulf of Mexico is unnecessary to promote the rapid deployment of competitive service for that region and is fundamentally inconsistent with the scope of nationwide PCS licensing which has already occurred. The initial licensing of broadband PCS services has taken place under the unique geographic licensing structure which precludes spectrum auctions for additional geographic service areas in the Gulf of Mexico. PCS licensees like Aerial Communications and Western PCS are in the midst of launching new competitive wireless systems based upon the service opportunities permitted under the Commission's rules and policies. Their rights to serve subscribers


in the Gulf of Mexico have already been confirmed by the Commission. Any possible redefinition of Gulf service areas will only confuse potential subscribers and impair the legitimate efforts of these licensees to launch their new services. The Commission should not alter its service area or other licensing rules as they currently apply to PCS services in the Gulf of Mexico.

Respectfully submitted,

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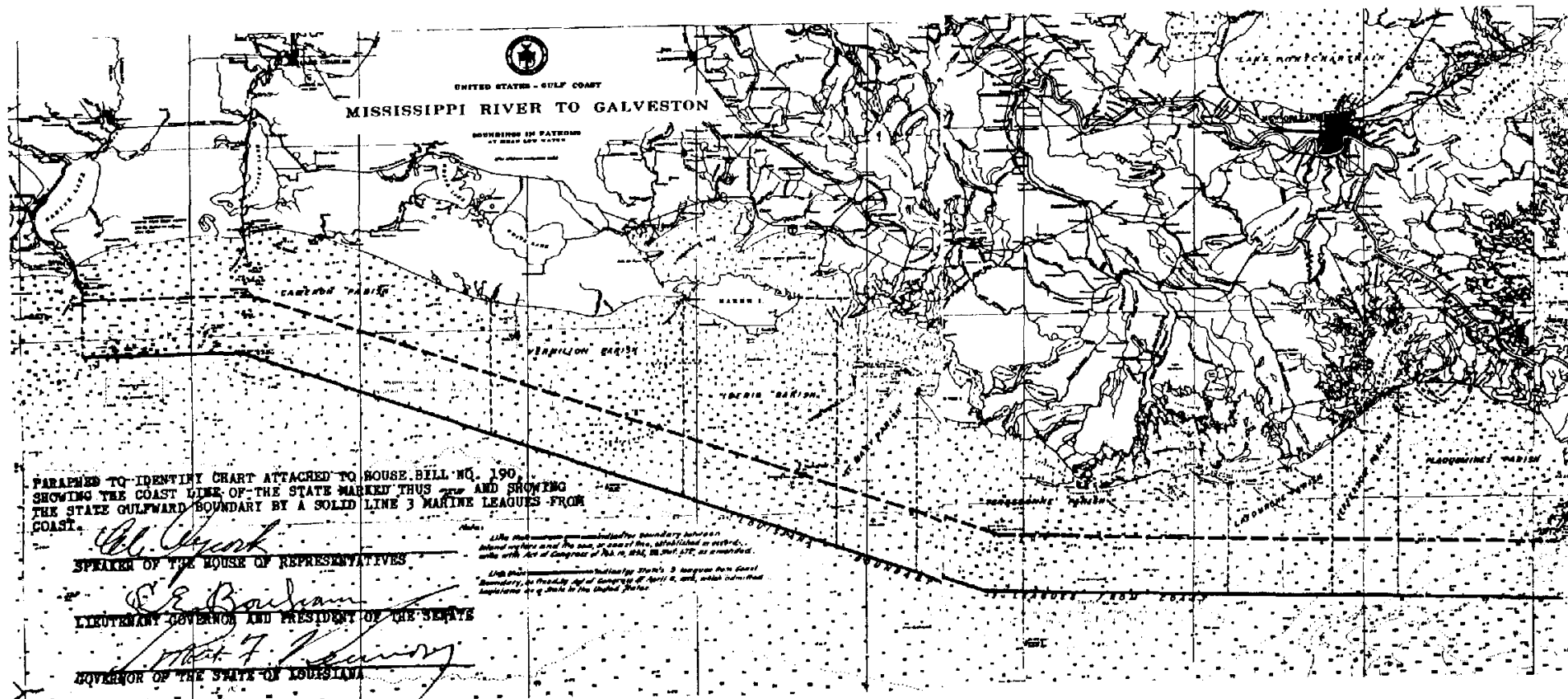
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July 2, 1997





CERTIFICATE OF SERVICE

I, Judy Norris, a legal secretary in the law firm of Koteen & Naftalin, L.L.P., certify that on the 2nd day of July, 1997, copies of the foregoing Comments were deposited in the U.S. mail, postage prepaid, addressed to:

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\_\_\_\_\_  
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